Syncor International Corporation *and* Teamsters Local Union No. 769 a/w International Brotherhood of Teamsters, AFL–CIO *and* Jose Questell. Cases 12–CA–17698 and 12–CA–17854

July 23, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On February 28, 1997, Administrative Law Judge Raymond P. Green issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs. The Respondent filed cross-exceptions and separate answering briefs to the other parties' exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions,[2] except as discussed below, and to adopt his recommended Order as modified and set forth in full below.[3]

1. The Respondent argues, inter alia, that the evidence, even as credited by the judge, does not support the judge's 8(a)(1) findings. We adopt the judge's findings, except in one instance where we find no violation based on statements by Pharmacist Anthony Tascione, an admitted supervisor, to employees who were working in the Respondent's lab in September 1995.

The judge credited the testimony given by employee Junior Kerr about this conversation. Tascione did not testify. According to Kerr,

> [Tascione] said the Union was no good and they were only after our money. And if—if the Union should come in, then we would be making less money after we paid dues to the Union.

Viewed in context, Tascione's remark about ''making less money'' cannot reasonably be interpreted as a threat to reduce employees' wages because of their union support. Rather, the clear implication of his remark was to serve as a reminder that the payment of union dues would result in an expense not currently borne by the employees. Cf. *Clements Wire & Mfg. Co.*, 257 NLRB 206, 213 (1981) (supervisor unlawfully threatened that employees would be making less money if the union came). We find that Tascione's statement did not reasonably tend to interfere with employee rights under the Act. We therefore reverse the judge and dismiss this 8(a)(1) allegation.

2. In addition to the violations found by the judge, the General Counsel seeks, inter alia, the finding of an additional violation of Section 8(a)(1) of the Act based on comments made by Pasquale LaVallo, the Respondent's general manager, to employee Vincent Lorenzo in early October. The General Counsel argues that, although the judge discussed the facts surrounding this incident, he failed to determine whether LaVallo's statements constituted unlawful conduct as alleged by paragraph 6(d) of the outstanding consolidated complaint.[4] We find merit in the General Counsel's exception.

The judge found that in early October 1995, Lorenzo was given an initial written warning for his purported failure to clean up ammunition cans as directed by LaVallo. He further found that, after Lorenzo protested and asserted that he had done his job, LaVallo tore up the warning but said that the reason he needed to document these things was ''because of the f Union'' and ''because of your leader out there.''[5] We find that LaVallo's stated explanation for Lorenzo's warning could reasonably be understood as a threat of tighter and more documented discipline for employees because of the Union and its supporters. See *Northern Wire Corp.*, 291 NLRB 727, 730–731 (1988), enfd. 887 F.2d 1313, 1318 (7th Cir. 1989). Ac-

[1] The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In adopting the judge's findings that the Respondent unlawfully interrogated employees, Chairman Gould does not rely on *Rossmore House*, 269 NLRB 1176 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985), which he would reverse. See *Greenwood Health Center*, 322 NLRB 334 at fn. 1 (1996).

The General Counsel and the Charging Party except to the judge's dismissal of the 8(a)(3) allegation pertaining to the discharge of employee Vincent Lorenzo. We agree with the judge that the Respondent showed that Lorenzo's discharge would have taken place even in the absence of his protected union activity. See *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). However, in adopting this dismissal, we do not rely on the judge's finding that ''Lorenzo was, if anything, reticent about his sympathies for or against the Union and did not manifest any significant support during his brief tenure of employment,'' because the record does not support it. Rather, the record shows that Lorenzo engaged in protected union activities and openly manifested his support of unions to the Respondent.

[3] In item 4 of sec. III of his decision, the judge found that the Respondent violated Sec. 8(a)(1) of the Act when its general manager told an employee that he could not discuss the Union on company premises. However, the judge inadvertently failed to include remedial provisions for this violation. Accordingly, we have added such provisions to the judge's recommended Order and notice to employees. In addition, we shall also modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[4] The consolidated complaint reads, in pertinent part:

> 6. Respondent, by Pasquale LaVallo, at Respondent's facility . . . (d) In or about late September or early October 1995 . . . threatened employees with discipline and unspecified reprisals if they supported the Union and engaged in union activities.

[5] Lorenzo testified that this statement was a reference to union activist Junior Kerr.

cordingly, we find that LaVallo's remarks constituted a violation of Section 8(a)(1).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Syncor International Corporation, Pompano Beach, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union membership and activities.

(b) Creating the impression that the union activities of its employees were under surveillance.

(c) Threatening to make employees' conditions of work harder if they selected a union.

(d) Prohibiting employees from discussing a union on company premises.

(e) Threatening an employee with discipline and unspecified reprisals due to his union support.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Pompano Beach, Florida facility copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 16, 1995.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate our employees about their union membership and activities.

WE WILL NOT create the impression that the union activities of our employees are under surveillance.

WE WILL NOT threaten to make employees' conditions of work harder if they select a union.

WE WILL NOT prohibit our employees from discussing a union on company premises.

WE WILL NOT threaten an employee with discipline and unspecified reprisals due to his union support.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

SYNCOR INTERNATIONAL CORPORATION

Susy Kucera, Esq. and *Shelly Plass Esq.*, for the General Counsel.
Donald Carmody Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in Miami and Pompano Beach, Florida, on November 21 and 22, 1996. The charge and amended charges in 12–CA–17698 were filed by the Union on January 30, February 14, April 30, and May 24, 1996. The charge in Case 12–CA–17854 was filed by Jose Questell on March 22, 1996.[1] The consolidated complaint was issued on May 31, 1996, and alleged as follows:

1. That in August, September, and October 1995, the Respondent, by its manager, Pasquale LaVallo, interrogated employees about their union membership and activities.

2. That in September 1995, the Respondent prohibited employees from discussing the Union.

3. That in September 1995, the Respondent created the impression of surveillance.

4. That in late September or early October 1995, the Respondent threatened employees with discipline and unspecified reprisals.

5. That in September 1995, the Respondent, by Anthony Tascione and Zdenek Zapletal, impliedly threatened employees with unspecified reprisals.

6. That in September and October 1995, the Respondent, by Anthony Tascione, threatened to decrease employees' pay if they selected the Union.

[1] That portion of Mr. Questell's charge alleging that his discharge was discriminatory was dismissed by the Region.

7. That on October 31, 1995, the Respondent, by Loreen Ellliot, interrogated employees.

8. That on October 31, 1995, the Respondent discharged Vincent Lorenzo because of his union activities.

FINDINGS OF FACT

I. JURISDICTION

The Company admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Union's Organizing Campaign and Alleged 8(a)(1) Conduct*

The Company is a Delaware corporation having its main office in California. It provides radioactive pharmaceuticals to hospitals and clinics and employs about 2000 people at various locations around the country. The facility involved in the present case is located in Pompano Beach, Florida.

At its Pompano location, the company has a general manager, Pasquale LaVallo, several pharmacists, a laboratory supervisor, and about 15 people who work in the laboratory and who also deliver medicines to the Company's customers.

The people who are assigned to deliver medicines, including the alleged discriminatee, Vincent Lorenzo, are also responsible for picking up the spent and still radioactive hypodermic syringes which are temporarily stored at the hospital in what is called a ''hot'' room. The actual syringes are each encased in a lead container (called a pig), and a group of ''pigs'' are placed into ammunition (ammo) cans. Typically, a hospital's hot room, (normally a very small room), can hold a number of these ammo cans. But if they are not returned to Syncor on a regular basis and within a reasonable amount of time, they become a storage problem for the hospital. When they are picked up from a hospital, it is the job of the driver to immediately bring the ammo cans into the laboratory and to ''break it down'' which means taking the contents out and placing them in the proper places. Although a driver who returns at the end of the workday (4 p.m.), may not be able to break down his ammo cans on arrival, that would be the atypical situation. The confinement and transportation of radioactive medications is highly regulated by the Government and infractions can result in substantial fines.

The Union began to organize the drivers of the company at its Pompano Beach facility in the summer of 1995. The evidence indicates that the employees who were the leaders of this campaign were Junior Kerr and Jose Questell.

Vincent Lorenzo, was hired and began work on August 16, 1995. One of the reasons that he was hired was because he indicated on his application that he had prior experience dealing with nuclear medicines. In accordance with company policy, Lorenzo was to be a probationary employee for 90 days. This means that new employees, within this period of time, may be dismissed without the usual progressive disciplinary steps normally accorded to other employees. For our purposes, while it is clear that a company may not discharge a probationary employee for illegal reasons,[2] it is important to remember that in evaluating the evidence, a probationary employee must be looked at somewhat differently than a regular employee when considering if there was disparate treatment.

Coincidentally with Lorenzo's first day on the job, Sharon Green, the Company's human resources director, visited the facility and spoke to the employees about the Union. (This was before the petition for election was filed.) According to Lorenzo, Green began the meeting by asking what kind of problems the employees had that they needed a union. Lorenzo states that about three or four employees spoke and that he said that a union would be a good thing because it could act as a mediator if employees had a problem with management. Lorenzo testified that after the meeting, he was called aside by LaVallo who asked him what he thought about the meeting and what he thought about the Union. According to Lorenzo, he replied that although the other employees seemed to want a union to get more money, he thought that a union would be a good thing if problems arose between employees and the company. (This is not denied by LaVallo.)

Green acknowledges that she visited the shop on August 16, 1995, and spoke to the employees because she found out about the union campaign. She asserts that she encouraged employees to ask her questions about unions and she recalls that Lorenzo did say something, but testified that she could not really recall what. Green states that she left with the impression that Lorenzo was not in favor of unions and that as far as she could recall, he said that he didn't think that a union could do much for the employees.

Apart from whatever comments Lorenzo may have made about unions on his first day at work, the evidence indicates that he was not one of the employees who was actively involved in the union organizing campaign and that he did not openly manifest his support for the Union. In a pretrial affidavit given by Jose Questell, one of the union leaders, Questell stated:

> On or about August 17, the company gave a meeting about the union. Sharon Green was present and so was Pat LaVallo. I was there and so was Vince. I remember Vince asking a lot of questions. I do not remember what the questions were. I do not recall Vince saying anything good or bad about the Union. He didn't express his feelings. . . . Until the last moment, my understanding was that Vince had not made up his mind about the Union. I gathered this from our conversations. However, he did ask me a lot of questions because he saw how we were being treated with write-ups.

Junior Kerr testified that in September 1995, LaVallo called him into the office and asked ''what's going on.'' Kerr states that when he responded ''with what'' LaVallo said that he knew ''you guys'' are joining a union. According to Kerr, when he asked who gave LaVallo this information, the latter said that he shouldn't try to hide; that he knew that Kerr was the person trying to get a union in there. Kerr also testified that LaVallo told him that he should not

[2] *Korea News*, 297 NLRB 537, 540 (l990)

discuss the union on company premises. LaVallo did not deny this alleged conversation with Kerr.[3]

Kerr also testified that in September 1995, Anthony Tascione, one of the pharmacists (and a supervisor), made comments to him and other employees in the lab to the effect that the Union was no good; that it was ''only after our money''; and that after paying union dues, the employees would be making less money. This too was not disputed by the Company.

The Union filed a petition for an election in Case 12–RC–7903 on October 12, 1995. On October 23, the Company and the Union executed a Stipulated Election Agreement, and an election was held on Wednesday, November 22, 1995. The outcome of the election was that nine individuals cast votes against the Union and one person cast a vote in its favor.

Jose Questell testified, without contradiction, that in October 1995, LaVallo called him into the office and asked him what was going on. Figuring that LaVallo was asking about the Union, Questell replied that he hadn't made up his mind about the Union. He testified that he assumed LaVallo was asking about the Union because when he responded, LaVallo did not change the subject.

Questell also testified that on various occasions in September and October 1995, Supervisors Tascione and Zapletal made comments in the laboratory such as: (a) you think you have it tough now, just wait until the Union takes over; and (b) that the employees would suffer if the Union took over.

In early October 1995, Lorenzo was accused, with another employee, of not emptying their ammo cans on returning to the facility. In this instance, Lorenzo protested to LaVallo that he was doing his work and that LaVallo, after saying that he was going to give Lorenzo the benefit of the doubt, tore up the written warning. According to Lorenzo, LaVallo told him that since the Union was on the scene, his mind was not clear and that he had more important things to do than to have to document these things. Lorenzo states that LaVallo went on to say that the reason he had to do this was because of the Union and because of ''your leader out there,'' (presumably referring to one of the other employees who was active on behalf of the Union).

With respect to the above, LaVallo testified that on September 27, 1995, a group of employees, including Vincent Lorenzo, Junior Kerr, Jose Questell, and Brett Bradford, ignored his order that they clean up the ammo cans before the end of the shift and that consequently he gave them each a documented verbal warning dated October 3. Regarding Lorenzo, he testified that he tore up his warning and told Lorenzo that he was giving him the benefit of the doubt.

B. *The Discharge of Lorenzo*

Lorenzo worked from August 16, to October 31, 1995. As his first day of work was marked by Sharon Green's visit to talk about the Union, his last day was marked by a visit from Regional Sales Manager Loreen Elliot, who spoke to the employees about the upcoming union election. As noted above, between these two dates, Lorenzo was not one of the employees who actively or openly supported the Union.[4]

Lorenzo's version of his discharge is essentially as follows. He testified that on October 31, he attended a meeting from 10 a.m. to noon in the conference room. He states that Elliot told the six employees present that the Company didn't feel that a union was in their best interest and said that all employees should vote in the election. Lorenzo testified that Elliot said that the Union could not guarantee an increase in wages or benefits and that at one point she asked if anyone had any questions about her experience with unions inasmuch as she had previously been a union member when employed elsewhere. According to Lorenzo, when Elliot asked the group if they had any question, she looked directly at him and he said no. Although Lorenzo seems to place a lot of emphasis on this ''look,'' Elliot testified that when she talks to groups of people she generally picks out one person to focus her attention on.

According to Lorenzo, after the meeting was over, LaVallo called him into his office and accused him of not picking up returns and not emptying out ammo cans. Lorenzo states that LaVallo told him that he had complaints from other employees about Lorenzo acting bossy. At some point during this conversation, Elliot called on the intercom and told LaVallo that there were some problems with some blood samples. At this stage, according to Lorenzo, he asked if he was going to be fired and LaVallo said no. Lorenzo states, however, that when Elliot called the last time, LaVallo left the room, returned about 5 minutes later, and said that he had no choice but to terminate him right now. Lorenzo states that when he asked why, and asked if it was because of the Union, LaVallo said that if he didn't terminate him, Elliot would. Lorenzo testified that he kept asserting that he had done his work and suggested that he was being fired in order to prevent him from voting in the election.

As noted above, LaVallo testified that after Lorenzo was employed for a while, he noticed that some of the other employees were making fun of Lorenzo and indicating that he had a penchant for slacking off in his work and acting as if he was a boss. I also note that there is agreement that on or about October 3, 1995, LaVallo initially gave Lorenzo and others a warning for failing to break down the ammo cans.

LaVallo testified that some time prior to Lorenzo's discharge, he received a call from Mike McLauglin of Northwest Medical Center who complained that Syncor's driver was just at his premises but did not pick up the ammo cans containing the used radioactive syringes. LaVallo testified that he looked up the route sheets and determined that Lorenzo was the last person to make a stop at that facility. This incident was essentially corroborated by McLauglin who was called as a Respondent's witness and who stated that he called Syncor to complain about the failure to pick up the ammo cans which would present a serious problem for him on account of his lack of storage space. McLauglin

[3] The Company's employee handbook contains a solicitation and distribution policy that is presumptively legal under *Our Way Inc.*, 268 NLRB 394 (1983). The written rule bars solicitation on company premises by employees during working time. It bars the distribution of literature from work areas or in nonwork areas only during the working time of either the person being solicited or the person doing the distribution. Based on Kerr's uncontradicted testimony, LaVallo's verbal instruction went beyond the written rule.

[4] By this time, Junior Kerr, who had been one of the leading union activists, had been injured in an accident and was no longer at work. Jose Questell, the other activist, was still employed and he acted as the Union's observer at the election. Although Questell was subsequently discharged in December 1995, that portion of his unfair labor practice charge alleging his discriminatory discharge, was dismissed by the Regional office.

could not testify as to which driver was the person responsible and LaVallo did not either issue a warning to or talk to Lorenzo at the time of this incident.

LaVallo states that he talked to Lorenzo on October 31 and that although this discussion was in the nature of a reprimand, he had not yet decided whether to retain or discharge Lorenzo. He testified that during this discussion, he received a call on the intercom from Sales Manager Loreen Elliot, who told him that she had just received a complaint from customer Jake Cullican who said that the last driver to his facility had failed to pick up the ammo cans. LaVallo states that when he checked the route slips, he determined that the last driver was Lorenzo. According to LaVallo, this last complaint, which happened to come from a very finicky customer, tipped the balance and he decided to discharge Lorenzo. He testified that Elliot told him that if he didn't get rid of the driver responsible, she would. He also testified that he was not aware if Lorenzo favored the Union.

Elliot testified that she received the complaint from Jack Cullican on October 31, and that she relayed the message to LaVallo. She testified that she told him that Cullican was Syncor's largest area customer and that they could not have this type of complaint. Elliot testified that Cullican did not tell her who the driver was and that when she spoke to LaVallo about the complaint, she did not know the identify of the driver. She did not testify that she told LaVallo that she would fire the driver if he didn't.

Cullican did not testify in this case. Originally he was subpoenaed by the General Counsel and the Respondent, relying on that fact, did not issue its own subpoena to him. For whatever reason, the General Counsel chose not to call Cullican as a witness and apparently told him that his testimony was not necessary for her case. When Respondent tried to contact him to appear as its witness, Cullican, according to Elliot, told her that he would not testify because he had been told by the General Counsel that his testimony was unnecessary. There is nothing improper for the General Counsel to release a witness she has subpoenaed because she has determined not to use his testimony. However, the Respondent, which also wanted to call Cullican, was faced with what was apparently a misunderstanding on Cullican's part that his testimony was not needed at all. Rather than adjourn this case in order to allow the Respondent to subpoena Cullican, the Respondent chose not to do this to a person who was also a large and somewhat cantankerous customer. Because of this unusual set of circumstances, Cullican did not testify in this proceeding and I shall draw no adverse inference against either party as a result of either's failure to call him as a witness.[5]

III. ANALYSIS

Apart from the alleged 8(a)(3) allegation regarding the discharge of Lorenzo, a good part of the General Counsel's case was not disputed. Thus, some of the statements that were alleged to be 8(a)(1) violations, were not contradicted by the Respondent's witnesses. Accordingly, I make the following findings:

1. That in August and September 1995, the Respondent interrogated employees about the Union. *Rossmore House*, 269 NLRB 1176 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985)

2. That in September 1995, the Respondent, by LaVallo, created the impression of surveillance by telling Junior Kerr that he knew ''you guys'' are ''joining the Union'' and knew that Kerr was the person trying to get a union. *Peter Vitalie Co.*, 310 NLRB 865, 874 (1993); *Sarah Neuman Nursing Home*, 270 NLRB 663, 680 (1984); *South Shore Hospital*, 229 NLRB 363 (1997).[6]

3. That in September and October 1995, the Respondent by Tascione and Zapletal made comments to employees in the laboratory that reasonably could be construed as threats that if the employees selected the Union, their conditions of work would be harder and that they would earn less money. *Best Plumbing Supply*, 310 NLRB 143, 144 (1993).

4. That in September 1995, the Respondent, by LaVallo, told Kerr that he could not discuss the Union on the Company's premises. *Sears, Roebuck & Co*. 305 NLRB 193, 200 (1991). *Our Way*, 268 NLRB 394 (1983); *Southwest Gas Corp.*, 283 NLRB 543 (1987); *Marathon Letourneau Co. v. NLRB*, 699 F.2d 248 (1983).

With respect to the 8(a)(3) allegation, the General Counsel's theory is that although Lorenzo was not very involved in the Union, the Company discharged him on October 31, 1995 in order to send a message to the other employees prior to the election. I suppose this would be like a General who decides to execute, at random, a few soldiers because their unit as a whole, failed to carry out orders to attack. (See *Paths of Glory* by Stanley Kubrick).

The Company contends that during the brief period that Lorenzo was employed, it become apparent to management that he was not performing his job up to expectations, and that other employees were beginning to make fun of him on account of their perception that he shirked his work. More specifically, the Company points to two serious customer complaints regarding a failure, traceable to Lorenzo, to pick up used ammo cans from two hospitals. These complaints, according to the Company, occurred about a week before and on the day of his discharge.

The General Counsel's theory is, I suppose, possible. But I do not think that it is likely or probable. Although I have found that certain of the Company's supervisors violated Section 8(a)(1) of the Act (thereby establishing an element of antiunion animus), the fact remains that Lorenzo was, if anything, reticent about his sympathies for or against the Union and did not manifest any significant support during

[5] McLauglin was in exactly the same situation as Cullican. However, McLauglin indicated that he would be willing to testify but only if the hearing was moved to Pompano Beach which was much closer to his hospital. As this was also convenient for all of the other witness, the second day of the hearing was held in Pompano Beach, Florida.

[6] In *Peter Vitalie Co.*, supra, the administrative law judge stated that ''to tell employees which ones were the ring leaders for the Union when the employees in question had not openly demonstrated their support for the Union leaves the impression among the employees that their union activities are being surveilled.'' However, in *South Shore Hospital*, supra, the Board rejected the administrative law judge's conclusion that the respondent had unlawfully created the impression of surveillance based on a statement to the effect that there was talk of having a union all over the hospital. The Board noted that the statement indicated, at most the the Company was merely aware of the interest in unionization by some of the employees.

his brief tenure of employment. According to his own testimony, he signed a union card on September 13, 1995, and, at most, stated on one occasion, back in August 1995, that a union might be a good idea, not as an advocate for the employees, but as a mediator to resolve problems between the employees and management. According to union activist Questell, Lorenzo was not one of the employees who actively supported the Union and kept his opinions about this subject to himself.

The evidence establishes to my satisfaction, that two of the Company's customers made complaints about a driver not picking up the used radiocative syringes. I credit the testimony of LaVallo, that after checking the routing slips, he discovered that the driver responsible was Lorenzo. The first of these complaints occurred about a week before and seems to have been the reason that LaVallo decided to talk to Lorenzo on October 31. And the second complaint occurred on October 31, 1995, which coincidentally was the very same day that Elliot was at the facility addressing employees about the Union. Assuming as I do, that LaVallo reasonably believed that Lorenzo had failed to pick up the ammo cans, I do not view these incidents as being trivial or the kind that the Company could easily overlook whether from a long-term or a probationary driver. Perhaps with a nonprobationary employee, the result would have been some form of discipline short of discharge. But I cannot say that LaVallo's decision to discharge a probationary employee in this circumstance was unreasonable. I certainly can't say it was pretextual.

In view of the evidence showing that on at least two occasions, proximate to the time of Lorenzo's discharge, the Company had reasonable grounds to believe that he was not doing his job properly, I think that the Respondent has met its burden of showing that it would have discharged Lorenzo for nondiscriminatory reasons irrespective of any alleged union or protected concerted activity on his part. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982)

CONCLUSIONS OF LAW

1. By interrogating employees about their union membership and activities, the Respondent has violated Section 8(a)(1) of the Act.

2. By creating the impression that the union activities of its employees were under surveillance, the Respondent violated Section 8(a)(1) of the Act.

3. By threatening to make their conditions of work harder and by telling employees that they would earn less money if they selected a union, the Respondent has violated Section 8(a)(1) of the Act.

4. By the aforesaid conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]